

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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**APR 19 2005**

Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Section 73.622 (b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
Johnstown and Jeannette, Pennsylvania

DOCKET FILE COPY ORIGINAL

) MB Docket No. 05-52  
) RM-10300  
)  
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**REPLY COMMENTS OF VIACOM TELEVISION STATIONS GROUP OF  
PITTSBURGH INC.**

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April 19, 2005

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## SUMMARY

Viacom Television Stations Group of Pittsburgh Inc. ("Viacom" or "Petitioner") submits these Reply Comments in response to the comments of Larry L. Schrecongost, licensee of Class A television station WLLS-LP, Indiana, Pennsylvania ("Opponent"), opposing a proposal to amend the DTV Table of Allotments. The proposed amendment would substitute DTV Channel 49 for DTV Channel 30 at Johnstown, Pennsylvania, and reallocate DTV channel 49 from Johnstown to Jeannette, Pennsylvania (the "Proposal").

Opponent first seeks to relitigate the Commission's 1997 decision to reassign the analog and digital allotments for NTSC Channel 19 from Johnstown to Jeannette. But the Commission's 1997 decision expressly found that the public interest would be served by "provid[ing] [Jeannette] with its first local television broadcast service." The Commission's subsequent failure to update the DTV Table of Allotments to reflect this amendment was based simply on oversight. Contrary to Opponent's argument, no further public interest showing is required now to conform the DTV Table to a change made in the NTSC Table some eight years ago.

Opponent also contends that the Commission's original decision to reallocate WNPA-TV/DT to Jeannette was premised on there being no change in the transmitter site, and therefore no impact on the DTV Table of Allotments. But WLLS is complaining about interference it will receive, not any impact on the DTV Table. In fact, the DTV Table will be unaffected by adoption of the Proposal.

Equally frivolous is Opponent's effort to suggest that the DTV Table was frozen in place as of the expiration of the period for filing petitions for reconsideration of the *Sixth Report and Order*. A glance at the Commission's Web Site makes immediately clear that numerous

rulemaking petitions for DTV channel changes are presently being entertained that were filed long after the deadline for requests for reconsideration of the *Sixth Report and Order*, including almost a dozen filed in 2004.

Opponent's principal argument is that the channel change contemplated for WNPA's digital allotment – originally proposed by Viacom three months before enactment of the Community Broadcasters Protection Act ("CBPA" or the "Act") – does not afford the Act's mandated interference protection for Class A stations to WLLS. On several grounds, it is clear that WNPA-DT has priority over WLLS-LP for this purpose. First, the CBPA expressly provides that, even after granting certification of eligibility for a Class A license, "the Commission *shall* make such modifications as necessary" in order "to permit maximization of a full-power digital television applicant's service area." Second, it is clear that a DTV rulemaking petition filed by a party already holding a DTV authorization, and pending at the time of the adoption of the CBPA, is entitled to priority over a Class A station. Opponent quotes the Commission as saying, in the *Class A Report and Order*, that "[i]n a new DTV allotment rule making, we will require protection of Class A stations." However, it omits critical language limiting the above to "*new DTV entrants, that is, petitioners who do not already have a DTV authorization.*"

Although displaced, WLLS need not go off the air. Two channels are available on which WLLS-LP could continue broadcasting, despite the 2004 "freeze" on certain channel changes and service area extensions. This is the way for WLLS to continue broadcasting – not by blocking the Commission's paramount goal of maximizing DTV service to the public.

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**REPLY COMMENTS OF VIACOM TELEVISION STATIONS GROUP OF  
PITTSBURGH INC.**

Viacom Television Stations Group of Pittsburgh Inc. ("Viacom" or "Petitioner") hereby respectfully submits these Reply Comments in response to the filing by Larry L. Schrecongost, licensee of Class A television station WLLS-LP, Indiana, Pennsylvania ("Opponent"), in opposition to an amendment of the DTV Table of Allotments proposed by a Notice of Proposed Rulemaking ("*Notice*"), released by the Commission on February 17, 2005. The *Notice* proposes amending the DTV Table by substituting DTV Channel 49 for DTV Channel 30 at Johnstown, Pennsylvania, and reallocating DTV channel 49 from Johnstown to Jeannette, Pennsylvania (the "*Proposal*").

Essentially, Opponent contends that the Proposal cannot be adopted because the channel change contemplated for the digital allotment of WNPA-DT – originally proposed by Viacom three months before enactment of the Community Broadcasters Protection Act ("CBPA" or the "Act") – does not afford the Act's mandated interference protection for Class A stations to WLLS. In so arguing, Opponent ignores language in the Commission's *Report & Order*,

*Establishment of a Class A Television Service*,<sup>1</sup> which clearly indicates that pending channel-change petitions from parties already holding a DTV allotment have priority over Class A applicants. Class A stations remain a secondary service *vis-à-vis* such proposed DTV channel changes, and nothing in the CBPA or the Commission's implementing *Class A Report & Order* suggests otherwise.

That does not mean that WLLS must go off the air. As shown in the Engineering Statement of Joseph M. Davis (attached as Exhibit A), there are at least two alternate channels that could be utilized by WLLS with its present ERP, antenna location, and directional antenna pattern remaining unchanged. The Commission has expressly indicated that Class A stations facing imminent disruption of service by full-service DTV stations may request Special Temporary Authority ("STA") for such channel changes, notwithstanding the current freeze on low power displacement applications. This is the way for WLLS to continue broadcasting – not by blocking the Commission's paramount goal of maximizing DTV service to the public.

### **FACTUAL BACKGROUND**

In 1996, Venture Technologies Group, Inc., ("Venture") the prior licensee of WNPA,<sup>2</sup> filed a petition for proposed rule making to change the station's allotment on Channel 19 from Johnstown to Jeannette, Pennsylvania. Venture argued that the Johnstown-Altoona market was economically depressed and could not support a fifth television broadcast station. In ultimately adopting the proposed reallocation, the Commission found that it would serve the public interest

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<sup>1</sup> *Report and Order, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, 15 FCC Rcd 6355 (2000) ("*Class A Report and Order*").

<sup>2</sup> The station's call letters at the time were WTWB-TV. For convenience, we refer to the station by its present call letters, WNPA.

by "provid[ing] [Jeannette] with its first local television broadcast service."<sup>3</sup> In accordance with its previously-announced decision to consider pending petitions for amendments to the NTSC Table of Allotments on "on a case-by-case basis taking into account the impact on the draft DTV table,"<sup>4</sup> the Commission noted that there would be no effect on the draft Table "because the proposal does not result in a new allotment but merely the reallocation of an existing allotment with no change in the transmitter site."<sup>5</sup> In view of these findings, the Commission amended the Table of Allotments to reallocate NTSC Channel 19 from Johnstown to Jeannette. However, the subsequently-released DTV Table of Allotments was not updated in light of this amendment. Thus, the DTV Table did not reflect the reassignment of Channel 19 – for which Channel 30 was the paired digital allotment – from Johnstown to Jeannette.

On August 25, 1999, Viacom – by that time the licensee of WNPA<sup>6</sup> – filed a Petition for Rulemaking to amend the DTV Table of Allotments to substitute Channel 49 for Channel 30 as the station's DTV frequency.<sup>7</sup> After noting that the DTV Table of Allotments had not been updated to reflect the change in WNPA's community of license, the petition set forth the reasons for the requested channel change. The petition explained that, because of its co-location with the

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<sup>3</sup> See, *Report and Order, Johnstown and Jeannette, Pennsylvania*, MM Docket No. 97-96, 12 FCC Rcd 10300 (1997) ("*Johnstown/Jeannette R&O*").

<sup>4</sup> *Sixth Further Notice of Proposed Rulemaking, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10992 (1996).

<sup>5</sup> *Johnstown/Jeannette R&O, supra*.

<sup>6</sup> Viacom Stations Group of Pittsburgh Inc. was at the time known as Paramount Stations Group of Pittsburgh Inc. The entities are the same, and for convenience will be referred to herein as "Viacom."

<sup>7</sup> See, *Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed August 25, 1999.

first adjacent allotment of WWCP-DT on Channel 29, WNPA-DT was unable to move its transmitting site from its existing location – approximately 42 kilometers from Jeannette with significant intervening terrain – to one closer to its community of license. The petition urged that a channel change would eliminate this obstacle to improved service to Jeannette, and demonstrated that the proposed WNPA facilities would not create new interference to any station in excess of the Commission's *de minimis* standard.

On November 29, 1999, the Community Broadcasters Protection Act<sup>8</sup> was signed into law. The Act provided, *inter alia*, that low power television stations certifying their eligibility for Class A status within 60 days of the statute's adoption would be afforded certain interference protection against full service stations, as of the certification date, if a timely application for Class A designation were ultimately approved by the Commission. However, the Act expressly stated that

If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters *or channel assignment* in the digital television Table of Allotments, the Commission shall make such modifications as necessary –

....

(ii) to permit maximization of a full-power digital television applicant's service area . . . if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.<sup>9</sup>

Viacom subsequently filed a timely notice of intent to maximize the facilities of WNPA-

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<sup>8</sup> 47 U.S.C. § 336(f).

<sup>9</sup> 47 U.S.C. § 336(f) (1) (D) (emphasis added).



DT.<sup>10</sup> On May 1, 2000, it filed an Amended Petition for Rulemaking ("Amended Petition") to request "maximized facilities for WNPA-DT, which entail height above average terrain of 210 meters and a **maximized power level of 230kW effective radiated power.**"<sup>11</sup> (Emphasis in the original).

The Viacom petitions to change WNPA-DT's channel from 30 to 49 were reflected in the Commission's publicly-accessible engineering data base. The data base included such an entry on July 10, 2001, the day before WLLS-LP filed its application to convert its facilities to Class A status.<sup>12</sup>

As part of that application, and despite the availability in the Commission's data base of the entry described above, WLLS certified that its application complied with Section 73.6013 of the Commission's rules concerning interference protection of DTV stations. Section 73.6013 states:

Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments . . . , by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999.

Approximately one month later, on August 14, 2001, Viacom filed a further amendment to its rulemaking petition which, *inter alia*, specified a new proposed transmitting site (the

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<sup>10</sup> See, <http://www.fcc.gov/mb/video/files/dtvmax.html>.

<sup>11</sup> *Amended Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed May 1, 2000, at 2.

<sup>12</sup> Archival data base records maintained at the offices of Cavell, Mertz & Davis, Inc. In addition, a copy of the Commission's former TV engineering data base for December 30, 1999, also reflects the pendency of the WNPA-DT channel-change petition.

"Further Amended Petition").<sup>13</sup> Thereafter, on October 23, 2001, the Commission released a Notice of Proposed Rulemaking proposing to adopt the requested channel change.<sup>14</sup> That rulemaking, however, was never completed, apparently because the Federal Register declined to publish it, which in turn was due to the earlier error that had caused the Federal Register to fail to publish the change in allotment from Johnstown to Jeannette.<sup>15</sup> Accordingly, after these technical difficulties were worked out, the Commission released the instant *Notice*, again proposing the substitution of Channel 49 for Channel 30.

### **ARGUMENT**

#### **A. Opponent's Arguments Based on the Commission's 1997 Amendment of the Table of Allotments to Reassign WNPA's Allotments to Jeannette Are Frivolous.**

Perhaps aware of the weakness of his arguments under the Community Broadcasters Protection Act, Opponent first seeks to relitigate the Commission's 1997 decision to reassign the analog and digital allotments for NTSC Channel 19 from Johnstown to Jeannette, Pennsylvania. His efforts to do so are manifestly frivolous.

The Commission's 1997 decision to amend the Table of Allotments expressly found that the public interest would be served by "provid[ing] [Jeannette] with its first local television broadcast service." The fact that the subsequently-released DTV Table of Allotments was not

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<sup>13</sup> *Amended Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed August 14, 2001.

<sup>14</sup> *See, Notice of Proposed Rulemaking, In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Jeanette, Pennsylvania)*, 16 FCC Rcd 18746 (2001). This rulemaking has now been superseded by the instant proceeding.

<sup>15</sup> The above is based on an explanation given by Television Branch personnel to Viacom representatives in response to queries as to the status of the rulemaking.

updated to reflect this amendment was based on nothing other than oversight.<sup>16</sup> It is simply absurd for Opponent now to argue that Petitioner must make a public interest showing to justify conforming the DTV Table to a change made in the NTSC Table some eight years ago.<sup>17</sup>

In like manner, Opponent contends that the Commission's original decision to reallocate WNPA-TV/DT to Jeannette was premised on there being no change in the transmitter site, and therefore no impact on the DTV Table of Allotments. Although the Commission certainly made that *observation*, it in no way suggested that a future site change – which also did not affect the DTV Table of Allotments – would be impermissible. The Engineering Statement submitted by Viacom with its Further Amended Petition showed that the contemplated site change would not result in additional interference to any NTSC or DTV station in excess of the Commission's *de minimis* standards. In any event, WLLS is complaining about interference it will receive, not any

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<sup>16</sup> As the Commission explained in the instant *Notice*: "Although the *Report and Order* reallocated NTSC Channel 19+ from Johnstown to Jeannette, Pennsylvania, the *Federal Register Summary* inadvertently did not request that the channel be removed from Johnstown, Pennsylvania." *Notice* at note 2.

<sup>17</sup> Were further argument necessary on this point, the following statement from the Commission's *Fifth Report and Order* in the DTV proceeding should suffice. In explaining why DTV applications for the paired frequency allotted to existing analog licensees would be treated as requests for minor modification, the Commission stated:

Pursuant to Section 73.3572 (a) (1) of the Commission's rules, a major change in a television station's facilities is any change in frequency or community of license. 47 C.F.R. § 73.3572 (a) (1). The change involved in constructing and operating a DTV facility does not constitute a change in frequency, merely the implementation of the initial DTV License on a channel assigned in the *Sixth Report and Order*. The analog site will remain on the same frequency. *Moreover, the DTV facility will, of course, be licensed to the same community, since it will be part of one license.*

*Fifth Report and Order, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, , 12 FCC Rcd 12809, 12840, n.159 (1997) ("*Fifth Report and Order*") (emphasis added).

impact on the DTV Table. Its attempt to seize on the recitation of an obvious fact in the *Johnstown/Jeanette R&O* as somehow precluding the changes sought in the Further Amended Petition is unavailing.

Equally frivolous is Opponent's effort to suggest that the DTV Table was frozen in place as of the expiration of the period for filing petitions for reconsideration of the *Sixth Report and Order*. A glance at the Commission's Web Site makes immediately apparent that numerous rulemaking petitions for DTV channel changes are presently being entertained that were filed long after the deadline for requests for reconsideration of the *Sixth Report and Order* – including almost a dozen filed in 2004.<sup>18</sup> Opponent cites no authority for its apparent view that, unlike the NTSC Table of Allotments, the Commission intended the DTV Table to be immutable after its initial adoption.

Finally, Opponent argues in a footnote that the present rulemaking proceeding is moot, because Viacom has elected Channel 19 – its NTSC allotment – as its permanent DTV frequency.<sup>19</sup> That contention, too, is without merit. On February 10, 2005, the deadline for First Round DTV channel elections, Viacom sent the following message both by e-mail to the mail box established by the Commission for reporting channel election issues, and by e-mail and courier to the staff person designated by the Commission:

This is to advise the Commission that Channel 19, the channel indicated on the face of the Form 382 filed by Viacom, is not its election, but reflects what we believe to be a computer software malfunction. Viacom in fact elects Channel 49 as the permanent DTV channel of WNPA-DT.

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<sup>18</sup> See, <http://www.fcc.gov/mb/video/files/dtvchan.html>.

<sup>19</sup> See, *Comments in Opposition to Notice of Proposed Rulemaking*, filed April 4, 2005, at 2, n.2.

On October 23, 2001, the Commission issued a Notice of Proposed Rulemaking, in response to a petition by Viacom, proposing the amendment of the DTV Table of Allotments at Jeannette, Pennsylvania, by substituting DTV Channel 49 for DTV Channel 30. Viacom's election of Channel 49 is made pursuant to the Instructions to FCC Form 382, which authorize the election of a substitute DTV channel when the Commission has issued a Notice of Proposed Rulemaking to implement the change.

For whatever reason, the Commission's electronic filing system would not accept Viacom's election of Channel 49 on Form 382. Nor would the system accept Channel 30 in the appropriate place on the form. The only channel that was accepted by the system was Channel 19, WNPA-TV's NTSC allotment.<sup>20</sup>

Viacom has clearly elected Channel 49 as WNPA-DT's permanent digital frequency.

**B. Viacom's Petition for Rulemaking, Filed Before the Community Broadcaster's Protection Act Was Even Adopted, Clearly Has Priority Over Class A Television Station WLLS-LP.**

Whether viewed as a timely application for maximization of WNPA-DT's facilities, or merely as a rulemaking petition by an existing DTV licensee that was pending before adoption of the Community Broadcaster's Protection Act, it is clear that WNPA-DT has priority over, and may properly displace, Class A station WLLS-LP.<sup>21</sup>

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<sup>20</sup> See, Letter dated February 10, 2005 from Howard F. Jaeckel, Vice President, Associate General Counsel, CBS Broadcasting Inc. to Nazifa Naim, FCC (emphasis in the original). Copies of Viacom's letter and e-mail are attached hereto as Exhibit B.

<sup>21</sup> As shown in the attached Engineering Statement of Joseph M. Davis (pages 3-4), the facilities proposed in Viacom's original petition for rulemaking, which was pending as of the adoption of the Community Broadcasters Protection Act, would have displaced the WLLS-LP operation on Channel 49. The same is true of the Amended Petition, filed by Viacom on May 1, 2000, for the purpose of "maximizing" WNPA-DT's facilities. It is therefore of no consequence that the WNPA-DT operation proposed in the Further Amended Petition would increase interference to WLLS-LP even further. Since WLLS-LP would have suffered displacement as a result of the facilities proposed in both the original Petition and the Amended Petition – both of which have clear priority over the Class A station – any further increase in interference caused by the Further Amended Petition is purely theoretical.

1. Maximization

As noted above, the Community Broadcaster's Protection Act expressly provides that, even after granting certification of eligibility for a Class A license, "the Commission *shall* make such modifications as necessary" in order "to permit maximization of a full-power digital television applicant's service area."<sup>22</sup> This provision is clearly applicable to the instant case, since Viacom timely filed a notice of intent to maximize WNPA-DT's facilities, and an amendment to its pending rulemaking petition specifying a "maximized power level of 230kW effective radiated power."

Attempting to avoid the dispositive effect of the above provision, Opponent asserts that it applies only when necessary to solve "technical problems." The Commission has expressly held otherwise. Thus, in its *Class A Report and Order*, the Commission considered whether the reference to "technical problems" in Section (f) (1) (D) of the Act<sup>23</sup> applied to maximization applications, and concluded it did not. The Commission stated:

[T]he statutory language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. . . . Although Section (f) (1) (D) appears to tie replication and maximization to resolution of technical problems, Section (f) (7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements . . . without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f) (1) (D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power . . . regardless of the existence of "technical problems."<sup>24</sup>

<sup>22</sup> 47 U.S.C. § 336 (f) (1) (D) (ii).

<sup>23</sup> *Id.*

<sup>24</sup> *Class A Report and Order, supra*, 15 FCC Rcd at 6377 (footnote omitted) (emphasis added).

It is plain, then, that the Class A certification and application of WLLS-LP was secondary to the Amended Petition's requested maximization of WNPA-DT's facilities. WLLS-LP was obligated to protect the contemplated maximization of WNPA-DT; instead, Opponent incorrectly certified that his application complied with the Commission's rules regarding interference to digital stations.<sup>25</sup> Since Viacom's rulemaking petition was included in the Commission's publicly-accessible data base, Opponent has only his lack of diligence to blame for the current situation.

## 2. Rulemaking

Even were the Commission not to view Viacom's Amended Petition as a maximization application, it is nonetheless clear that a DTV rulemaking petition filed by a party already holding a DTV authorization, and pending at the time of the adoption of the CBPA, is entitled to priority over a Class A station. Opponent quotes the Commission as saying, in the *Class A Report and Order*, that "[i]n a new DTV allotment rule making, we will require protection of Class A stations." But Opponent does not quote the immediately following sentence, in which the Commission explained its reference to "new" DTV allotment rulemakings: "We will not require Class A applicants to protect pending allotment proposals from *new DTV entrants, that is, petitioners who do not already have a DTV authorization.*"<sup>26</sup> Opponent's studied avoidance of this language is telling.

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<sup>25</sup> As set forth in the attached Engineering Statement of Joseph M. Davis (at 3), the operation proposed in WLLS-LP application was predicted to cause 2.14 percent interference to the "maximized" WNPA-DT facilities contemplated by the *Amended Petition*, filed on May 1, 2000.

<sup>26</sup> *Class A Report and Order, supra*, 15 FCC Rcd at 6376.

It will not avail Opponent to contend that, since WNPA-DT lacked a construction permit for specified facilities, it did not hold "a DTV authorization." In the *Fifth Report and Order*, the Commission explained its licensing scheme for DTV:

The statute directs us to limit initial eligibility for DTV licenses to persons that, as of the date of the issuance of the licenses, are licensed to operate a television broadcast station or hold a permit to construct such a station, or both. As the statute contemplates, we hereby issue a *license* to all eligible licensees and permittees . . . We conclude that it more effectively effectuates the congressional scheme to implement the statute through a three-phased process, *with the first phase consisting of the initial DTV license*, rather than through our conventional procedure.<sup>27</sup>

It is absolutely clear, therefore, that as licensee of WNPA-DT, Viacom was not "a new DTV entrant," whose pending allotment proposals a Class A station would not be required to protect, but rather the holder of a DTV authorization, whose pending channel-change petitions would have priority over such stations.

**C. Although it Will Be Displaced by WNPA-DT's Proposed Facilities, WLLS-LP Need Not Go Off the Air.**

As shown in the attached Engineering Statement of Joseph M. Davis, two channels are available on which WLLS-LP could continue broadcasting. One of these substitute channels could be used by WLLS-LP during the remainder of the digital transition, despite the Commission's August 3, 2004 "freeze" on certain channel changes and service area extensions.<sup>28</sup> Thus the Public Notice announcing that freeze stated that, as an exception, "on-air Class A stations demonstrating that they face imminent disruption of service may request Special Temporary Authority ("STA") to continue operations."

<sup>27</sup> *Fifth Report and Order*, *supra*, 12 FCC Rcd at 12838 (emphasis added).

<sup>28</sup> *Public Notice, Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, DA 04-2446, released August 3, 2004.



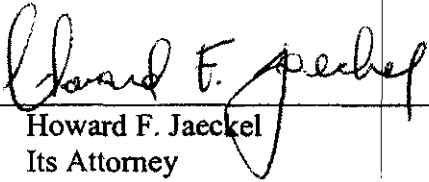
That course is open to WLLS-LP here. Following it would clearly better advance the public interest, and the Commission's overriding objective to provide DTV service to as large a population as possible,<sup>29</sup> than further efforts to block WNPA-DT's maximization efforts.

### CONCLUSION

For the reasons set forth above, the Proposal should be adopted, and the DTV Table of Allotments amended by substituting DTV Channel 49 for DTV Channel 30 at Johnstown, Pennsylvania, and reallocating DTV channel 49 from Johnstown to Jeannette, Pennsylvania.

Respectfully submitted,

VIACOM TELEVISION STATIONS GROUP  
OF PITTSBURGH INC.

By:   
Howard F. Jaeckel  
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April 19, 2005

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<sup>29</sup> As indicated in the Engineering Statement of Denny & Associates, P.C. (at page 5), attached to the *Further Amended Petition* filed on August 14, 2001, the proposed WNPA-DT facilities would result in service to more than 800,000 additional persons.

**EXHIBIT A**

## **Engineering Statement**

in support of

### **REPLY COMMENTS**

prepared for

#### **Viacom Stations Group Of Pittsburgh Inc.**

WNPA-DT Johnstown and Jeanette, Pennsylvania

MB Docket 05-52

This engineering statement has been prepared on behalf of *Viacom Stations Group Of Pittsburgh Inc.* ("Viacom"), in support of *Reply Comments* in a Notice of Proposed Rulemaking ("NPRM"), Media Bureau Docket 05-52.<sup>1</sup> The subject docket proposes to change the paired digital television (DTV) assignment for WNPA(TV) (NTSC Channel 19, Jeanette, PA) from DTV Channel 30 (Johnstown, PA) to DTV Channel 49 (Jeanette, PA), as requested by *Viacom*.

In his comments filed in Docket 05-52, *Larry L. Schrecongost* ("Schrecongost"), licensee of Class A television station WLLS-LP (Channel 49, Indiana, PA), objected to the requested DTV channel change as the action would displace WLLS-LP. *Schrecongost* avers that there are no alternate core channels available for continued WLLS-LP service to Indiana, PA. However, as discussed below, such concern is unwarranted as two suitable alternate channels are identified herein. Additionally, interference analysis results provided below indicate that the original WNPA-DT channel change petition (filed before the Congressional action creating the Class A television service) would have displaced WLLS-LP.

#### **Substitute Channels for WLLS-LP**

WLLS-LP is licensed (BLTTA-20010711AEF) to operate with a maximum effective radiated power ("ERP") of 21.3 kW using a directional antenna system (SWR model SWLP16EC, rotated to 305 degrees T). Using the presently licensed antenna location, ERP, and directional pattern, substitution of Channel 31 or Channel 36 would comply with FCC rules and policy. Channel 36 could even be employed with an increase in ERP to 31 kW.

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<sup>1</sup>*Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Johnstown and Jeanette, Pennsylvania)*, MB Docket No. 05-52, RM 10300, DA 05-359, released February 17, 2005.

## Engineering Statement

(page 2 of 5)

The use of either substitute channel would comply with the Commission's protection criteria of §73.6011 (analog television stations), §73.6012 (Class A, LPTV, TV translator stations), and §73.6013 (DTV stations). The attached **Tables 1 and 2** provide a summary of OET Bulletin 69 analysis results for each prospective substitute channel.<sup>2</sup> Analog television stations and LPTV stations are included in the OET Bulletin 69 analyses in instances where standard contour protection is not met, as permitted by §74.705(e) and §74.707(e), respectively. The results show that either substitute channel would not cause any new interference to any of these stations in excess of the Commission's 0.5 percent rounding tolerance permitted regarding analog Class A facility proposals.

A comparison of the resulting interference-free service area for the existing Channel 49 operation and the substitute channels indicates that WLLS-LP would increase population service under either substitute channel scenario. A summary is below, including Channel 36 at 21.3 kW and 31 kW.

	----- WLLS-LP Facility -----			
	Ch. 49 Lic	Ch. 31	Ch. 36	Ch. 36
POPULATION (1990 Census)	(21.3 kW)	(21.3 kW)	(21.3 kW)	(31.0 kW)
Within Noise Limited Contour:	65,706	76,315	72,093	87,023
not affected by terrain losses:	60,752	69,755	66,402	74,888
lost to NTSC IX:	0	35	0	10
lost to additional IX by ATV:	1	0	89	101
lost to all IX:	1	35	89	111
Net Interference-Free Service:	60,751	69,720	66,313	74,777

A substitute channel could be employed by WLLS-LP despite the Commission's August 3, 2004 "freeze" regarding channel changes and service area extensions.<sup>3</sup> The associated Public Notice states that as an exception to the freeze "on-air Class A stations demonstrating that they face imminent disruption of service may request Special Temporary Authority ("STA") to continue operations."

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<sup>2</sup>FCC Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, February 6, 2004. The implementation of OET Bulletin 69 for this study followed the guidelines of OET-69 as specified therein (1990 census data). Comparisons of various results of this computer program (run on a Sun processor) to the Commission's implementation of OET Bulletin 69 show excellent correlation.

<sup>3</sup>Public Notice "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," DA 04-2446, released August 3, 2004.

## **Engineering Statement**

(page 3 of 5)

### **WLLS-LP Protection of DTV Allotments**

*Schrecongost* filed FCC Form 302-CA on July 11, 2001 (BLTTA-20010711AEF) to convert WLLS-LP to Class A status. This application included a certification that WLLS-LP complied with DTV station and DTV Table of Allotments protection (§73.6013). The Commission's CDBS database of July 10, 2001 included a record showing the WNPA-DT petition to change to Channel 49 (based on archival database records maintained at the office of the undersigned). Additionally, a copy of the Commission's former TV engineering database<sup>4</sup> of December 30, 1999 also indicates the presence of the WNPA-DT petition. Therefore, at that time *Schrecongost* could have recognized the presence of the WNPA-DT channel change petition and sought a displacement channel.

An interference analysis per OET Bulletin 69 of the WLLS-LP facility's impact on the then-proposed WNPA-DT facility (230 kW, as amended on May 1, 2000, pending as of *Schrecongost's* submission of Form 302-CA) shows that WLLS-LP would have caused 2.14 percent interference to the 230 kW WNPA-DT Channel 49 petition facility. This exceeds the 0.5 percent rounding tolerance which is applied for Class A protection of DTV allotments. Additionally, WNPA-DT (at 230 kW) would have caused 21.13 percent new interference to WLLS-LP. See **Tables 3 and 4** for results of the interference analyses.

The WNPA-DT channel change petition was originally filed on August 25, 1999, before the November 29, 1999 establishment of the Community Broadcasters Protection Act of 1999, which in turn, created the Class A television service. The WNPA-DT parameters in that original petition involved 200 kW ERP. WLLS-LP would have been displaced in this case as well, as WNPA-DT would have caused 20.72 percent new interference to WLLS-LP and WLLS-LP would have caused 2.25 percent interference to WNPA-DT (also in excess of the 0.5 percent rounding tolerance).

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<sup>4</sup> The former database is also known as the "flat file," and was not updated after December 30, 1999 due to "Y2k" compatibility issues.

## **Engineering Statement**

(page 4 of 5)

The WNPA-DT channel change petition was amended again on August 14, 2001, which specified an ERP of 437 kW and a change in the proposed allotment point. In this final case, which is employed for the pending NPRM, WNPA-DT is predicted to cause 50.79 percent new interference to WLLS-LP and WLLS-LP causes 1.75 percent interference to the proposed WNPA-DT Channel 49 facility (in excess of the 0.5 percent rounding tolerance which is applied for Class A protection of DTV allotments).

Results of the interference analyses for each scenario are provided in the attached **Tables 3** and **4**. These results indicate that WLLS-LP would be displaced by the facility described in the original WNPA-DT petition as well as the facilities specified in each of the petition amendments.

### **WNPA-DT Protection to Other Class A Stations**

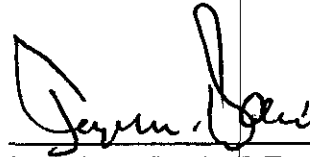
Ignoring WLLS-LP, an allocation study of the pending WNPA-DT channel change proposal indicates that standard protection is provided to all authorized Class A facilities, except for WBYD-CA, (Ch. 35, Johnstown, PA, Facility ID 68395, 16.6 km distant) where contour overlap exists. However, analysis per OET Bulletin 69 indicates that the WNPA-DT Channel 49 facility would not cause any interference to WBYD-CA. This is less than 0.5 percent interference and therefore complies with the Commission's policies towards protection of Class A stations.

**Engineering Statement**

(page 5 of 5)

**Certification**

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.



Joseph M. Davis, P.E.

April 15, 2005

Cavell, Mertz & Davis, Inc.  
7839 Ashton Avenue  
Manassas, VA 20109  
703-392-9090

**List of Attachments**

Table 1	Interference Analysis Results Summary -- WLLS-LP on Ch. 36 (31 kW)
Table 2	Interference Analysis Results Summary -- WLLS-LP on Ch. 31 (21.3 kW)
Table 3	WLLS-LP Interference Caused to WNPA-DT Petition
Table 4	WNPA-DT Interference Caused to WLLS-LP

Table 1  
**INTERFERENCE ANALYSIS RESULTS SUMMARY**  
**PROSPECTIVE WLLS-LP OPERATION ON CHANNEL 36 (31 kW)**  
 prepared for  
**Viacom Stations Group Of Pittsburgh Inc.**

**PROPOSED FACILITY AND ANALYSIS DATA**

Ch. 36- ERP 31.0 kW RCAMSL 585 m  
 Latitude 040-37-38 Longitude 0079-12-49  
 Antenna Model SWR\_EC Ref Azimuth 305.  
 Cell Size for Service Analysis 1.0 km/side  
 Distance Increments for Longley-Rice Analysis 1.00 km

<u>Stations Considered</u>	<u>City, State Channel</u>	<u>Distance (km)</u>	<u>Baseline Population (1)</u>	<u>Service Population (2)</u>	<i>----Unique Interference ---- From proposal</i>	
					<u>Population (3)</u>	<u>Percentage (4)</u>
WCWB(TV) (Lic)	Pittsburgh, PA 22	47.7	2,968,906	2,630,797	410	0.01
WYTV-DT (Ref)	Youngstown, OH 36	129.3	1,212,000	1,204,800	2,205	0.18
WYTV-DT (CP)	Youngstown, OH 36	129.3	1,212,000	1,383,710	5,843	0.48
WGPT(TV) (Lic)	Oakland, MD 36	136.0	185,386	88,055	311	0.17
WGPT(TV) (CP)	Oakland, MD 36	136.0	214,099	106,531	371	0.17
WITF-DT (Ref)	Harrisburg, PA 36	201.3	----- No interference caused by proposal -----			
WITF-DT (Lic)	Harrisburg, PA 36	201.3	----- No interference caused by proposal -----			
WENY-TV (Lic)	Elmira, NY 36	255.7	487,884	321,319	288	0.06
WTTG-DT (Ref)	Washington, DC 36	260.3	----- No interference caused by proposal -----			
WTTG-DT (Lic)	Washington, DC 36	260.3	----- Checklist facility, evaluation not required -----			



Table 1  
**INTERFERENCE ANALYSIS RESULTS SUMMARY**  
**PROSPECTIVE WLLS-LP OPERATION ON CHANNEL 36 (31 kW)**  
 (page 2 of 2)

<u>Stations Considered</u>	<u>City, State Channel</u>	<u>Distance (km)</u>	<u>Baseline Population (1)</u>	<u>Service Population (2)</u>	<u>----Unique Interference ---- From proposal</u>	
					<u>Population (3)</u>	<u>Percentage (4)</u>
WTTE-DT (Ref)	Columbus, OH 36	319.2	----- No interference caused by proposal -----			
WTTE-DT (CP)	Columbus, OH 36	332.7	1,675,000	2,048,352	0	0.00
WPXR-DT (Ref)	Roanoke, VA 36	389.9	----- No interference caused by proposal -----			
WPXR-DT (Lic)	Roanoke, VA 36	389.9	----- No interference caused by proposal -----			

**Notes:**

- (1) For DTV Stations: Greater of NTSC or DTV Service Population, from FCC Table  
 For NTSC Stations: Population within noise-limited contour  
 For LPTV & Class A Stations: Population within 74 dBμ contour (with dipole factor)
- (2) Interference-free service population per OET-69 before consideration of proposal
- (3) Net change in population receiving interference resulting from proposal
- (4) Proposal's impact in terms of percentage, equals (3)/(1) times 100 percent: not to exceed zero when rounded to the nearest whole percent

The determination of stations for consideration and the determination of baseline population and interference percentages were made as described in the Commission's August 10, 1998 Public Notice "Additional Application Processing Guidelines for Digital Television"

Channel 36 may also be employed at the same ERP as the licensed WLLS-LP, 21.3 kW, as the interference impact to other stations will be less than that summarized here for 31 kW operation.

Table 2  
**INTERFERENCE ANALYSIS RESULTS SUMMARY**  
**PROSPECTIVE WLLS-LP OPERATION ON CHANNEL 31 (21.3 kW)**  
 prepared for  
**Viacom Stations Group Of Pittsburgh Inc.**

**PROPOSED FACILITY AND ANALYSIS DATA**

Ch. 31- ERP 21.3 kW RCAMSL 585 m  
 Latitude 040-37-38 Longitude 0079-12-49  
 Antenna Model SWR\_EC Ref Azimuth 305.  
 Cell Size for Service Analysis 0.5 km/side  
 Distance Increments for Longley-Rice Analysis 0.10 km

<u>Stations Considered</u>	<u>City, State Channel</u>	<u>Distance (km)</u>	<u>Baseline Population (1)</u>	<u>Service Population (2)</u>	<i>----Unique Interference ---- From proposal</i>	
					<u>Population (3)</u>	<u>Percentage (4)</u>
WQEX(TV) (Lic)	Pittsburgh, PA 16	66.7	2,692,166	2,579,311	5,128	0.19
WQEX(TV) (CP)	Pittsburgh, PA 16	66.7	2,563,650	2,455,699	3,713	0.14
WQEX(TV) (App)	Pittsburgh, PA 16	66.7	2,552,888	2,443,178	4,477	0.18
WJW-DT (Ref)	Cleveland, OH 31	225.9	3,886,000	3,939,047	476	0.01
WJW-DT (Lic)	Cleveland, OH 31	225.9	3,886,000	3,903,078	145	0.00
WSWB-DT (Ref)	Scranton, PA 31	306.5	----- No interference caused by proposal -----			
WSWB-DT (CP)	Scranton, PA 31	306.5	----- Checklist facility, evaluation not required -----			
WPPX-DT (Ref)	Wilmington, DE 31	349.2	----- No interference caused by proposal -----			
WPPX-DT (Ref)	Wilmington, DE 31	344.2	----- No interference caused by proposal -----			
WTAJ-DT (Ref)	Altoona, PA 32	65.7	796,000	808,731	319	0.04
WTAJ-DT (CP)	Altoona, PA 32	65.7	796,000	850,701	328	0.04

Table 2  
**INTERFERENCE ANALYSIS RESULTS SUMMARY**  
**PROSPECTIVE WLLS-LP OPERATION ON CHANNEL 31 (21.3 kW)**  
(page 2 of 2)

<u>Stations Considered</u>	<u>City, State Channel</u>	<u>Distance (km)</u>	<u>Baseline Population</u> (1)	<u>Service Population</u> (2)	<i>----Unique Interference ---- From proposal</i>	
					<u>Population</u> (3)	<u>Percentage</u> (4)
New-LPTV (App)	Clarksburg, WV 31	176.3	74,245	51,633	3	0.00
WWBP-LP (Lic)	Freedom, PA 31	88.0	124,843	114,974	501	0.40
WWPB(TV) (Lic)	Hagerstown, MD 31	151.5	----- No interference caused by proposal -----			
New TV (PRM)	Sewickley, PA 38	68.2	----- No interference caused by proposal ----- (Evaluation not required, petition subject to dismissal <sup>1</sup> )			

Notes:

- (1) For DTV Stations: Greater of NTSC or DTV Service Population, from FCC Table  
For NTSC Stations: Population within noise-limited contour  
For LPTV & Class A Stations: Population within 74 dBμ contour (with dipole factor)
- (2) Interference-free service population per OET-69 before consideration of proposal
- (3) Net change in population receiving interference resulting from proposal
- (4) Proposal's impact in terms of percentage, equals (3)/(1) times 100 percent: not to exceed zero when rounded to the nearest whole percent

The determination of stations for consideration and the determination of baseline population and interference percentages were made as described in the Commission's August 10, 1998 Public Notice "Additional Application Processing Guidelines for Digital Television"

<sup>1</sup> The Commission's CDBS database indicates the existence of a Petition for Rulemaking (BPRM-19960725AAN) to establish a new analog television allotment at Sewickly, PA, having a reference point 68.2 km from WLLS-LP. This petition should be disregarded as in MB Docket 03-15 the Commission stated "the Media Bureau staff is directed to dismiss all pending petitions to change the NTSC Table of Allotments in which a Notice of Proposed Rule Making has not been issued prior to the adoption of this Order." (Report and Order, "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television," FCC 04-192, released September 7, 2004, at para. 68)

Table 3  
**WLLS-LP INTERFERENCE CAUSED TO WNPA-DT PETITION**

prepared for  
**Viacom Stations Group Of Pittsburgh Inc.**  
 WNPA-DT Johnstown and Jeanette, Pennsylvania  
 MB Docket 05-52

**Proposed WNPA-DT Ch. 49**  
**(200 kW - original technical parameters - August 25, 1999)**

	Without	With	
<u>POPULATION (1990 Census)</u>	<u>WLLS-LP</u>	<u>WLLS-LP</u>	
Within Noise Limited Contour:	2,827,759	2,827,759	
not affected by terrain losses:	2,766,501	2,766,501	
lost to NTSC IX:	24,971	98,679	
lost to additional IX by ATV:	119,840	105,052	
lost to all IX:	144,811	203,731	
Net Interference-Free Service:	2,621,690	2,562,770	
		58,920	new IX population
		2.25%	new IX percent

**Proposed WNPA-DT Ch. 49**  
**(230 kW - technical parameters as amended May 1, 2000)**

	Without	With	
<u>POPULATION (1990 Census)</u>	<u>WLLS-LP</u>	<u>WLLS-LP</u>	
Within Noise Limited Contour:	2,844,744	2,844,744	
not affected by terrain losses:	2,784,358	2,784,358	
lost to NTSC IX:	28,028	99,145	
lost to additional IX by ATV:	108,769	94,269	
lost to all IX:	136,797	193,414	
Net Interference-Free Service:	2,647,561	2,590,944	
		56,617	new IX population
		2.14%	new IX percent

**Proposed WNPA-DT Ch. 49**  
**(437 kW - final technical parameters - adopted in NPRM)**

	Without	With	
<u>POPULATION (1990 Census)</u>	<u>WLLS-LP</u>	<u>WLLS-LP</u>	
Within Noise Limited Contour:	3,169,064	3,169,064	
not affected by terrain losses:	2,997,003	2,997,003	
lost to NTSC IX:	29,660	88,653	
lost to additional IX by ATV:	115,401	114,044	
lost to all IX:	145,061	202,697	
Net Interference-Free Service:	2,851,942	2,794,306	
		57,636	new IX population
		2.02%	new IX percent

Table 4  
**WNPA-DT INTERFERENCE CAUSED TO WLLS-LP**  
 prepared for  
**Viacom Stations Group Of Pittsburgh Inc.**  
 WNPA-DT Johnstown and Jeanette, Pennsylvania  
 MB Docket 05-52

**WLLS-LP Ch. 49 Licensed Facility**

<u>POPULATION (1990 Census)</u>	<u>Without WNPA-DT</u>	<u>WNPA-DT 200 kW</u>	<u>WNPA-DT 230 kW</u>	<u>WNPA-DT 437 kW</u>
Within Noise Limited Contour:	65,706	65,706	65,706	65,706
not affected by terrain losses:	60,752	60,752	60,752	60,752
lost to NTSC IX:	0	0	0	0
lost to additional IX by ATV:	1	13,613	13,883	33,371
lost to all IX:	1	13,613	13,883	33,371
Net Interference-Free Service:	60,751	47,139	46,869	27,381
 new IX population:	 n/a	 13,612	 13,882	 33,370
new IX percent:	n/a	20.72%	21.13%	50.79%

**EXHIBIT B**



**CBS**

1515 BROADWAY  
NEW YORK, NEW YORK 10036-5794

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FAX: (212) 846-1907  
hfjaeckel@cbs.com

**HOWARD F. JAECKEL**  
VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL

**BY ELECTRONIC MAIL AND OVERNIGHT COURIER**

**Re: WNPA-DT, Jeannette, Pennsylvania**  
**DTV Channel Election (First Round) on FCC Form 382**

Dear Ms. Naim:

February 10, 2005

Reference is made to the filing by Viacom Stations Group of Pittsburgh Inc. ("Viacom")\* of FCC Form 382 for WNPA-DT, Jeannette, Pennsylvania.

This is to advise the Commission that Channel 19, the channel indicated on the face of the Form 382 filed by Viacom, is not its election, but reflects what we believe to be a computer software malfunction. Viacom in fact elects Channel 49 as the permanent DTV channel of WNPA-DT.

On October 23, 2001, the Commission issued a Notice of Proposed Rulemaking, in response to a petition by Viacom, proposing the amendment of the DTV Table of Allotments at Jeannette, Pennsylvania, by substituting DTV Channel 49 for DTV Channel 30. See, *Notice of Proposed Rulemaking*, 16 FCC Rcd 18746 (2001). Viacom's election of Channel 49 is made pursuant to the Instructions to FCC Form 382, which authorize the election of a substitute DTV channel when the Commission has issued a Notice of Proposed Rulemaking to implement the change.

For whatever reason, the Commission's electronic filing system would not accept Viacom's election of Channel 49 on Form 382. Nor would the system accept Channel 30 in the appropriate place on the form. The only channel that was accepted by the system was Channel 19, WNPA-TV's NTSC allotment.

We would very much appreciate the correction of the Commission's data base to reflect Viacom's actual election of Channel 49 as the permanent DTV channel of WNPA-DT.

Sincerely,

Nazifa Naim  
Federal Communications Commission  
Room 2-A726  
445 12th Street, S.W.  
Washington, D.C. 20554

\* Formerly known as Paramount Stations Group of Pittsburgh Inc.

**Jaeckel, Howard F**

---

**From:** Jaeckel, Howard F  
**Sent:** Thursday, February 10, 2005 5:01 PM  
**To:** 'form382@fcc.gov'  
**Subject:** WNPA-DT, Jeannette, Pennsylvania -- DTV Channel Election (First Round) on FCC Form 382

**Re: WNPA-DT, Jeannette, Pennsylvania  
DTV Channel Election (First Round) on FCC Form 382**

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Howard F. Jaeckel  
Assistant Secretary  
Viacom Inc.  
1515 Broadway  
New York, NY 10036  
(212) 846-3595

\* Formerly known as Paramount Stations Group of Pittsburgh Inc.



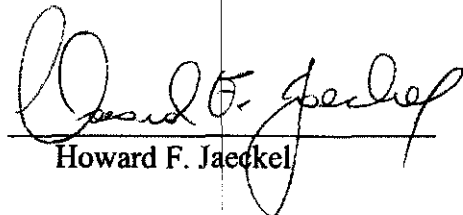
### CERTIFICATE OF SERVICE

I, Howard F. Jaeckel, hereby certify that on this 19<sup>th</sup> day of April, 2005, I caused copies of the foregoing "Reply Comments of Viacom Television Stations Group of Pittsburgh Inc." to be served by U.S. First Class Mail, postage prepaid, on:

John M. Pelky, Esq.  
Garvey Schubert Barer  
1000 Potamac Street, N.W.  
Fifth Floor, Flour Mill Building  
Washington, DC 20007-3501

I also certify that, on the same day, I caused said Reply Comments to be filed with, and served on, the following by hand delivery:

Barbara Kreisman, Chief  
Video Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554



Howard F. Jaeckel